

## **Chapter 27.75**

### **BOARD OF ZONING APPEALS**

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#### **27.75.010 Creation; Membership.**

The Board of Zoning Appeals is hereby continued, and members of the board on the effective date of this title shall continue to serve for the remainder of their appointed terms. The members of said board shall be appointed by the Mayor with the consent of the City Council, and such members must be approved by the County Board of Commissioners before the board may be the City-County Board. There shall be five members of the board, and not less than one nor more than two shall be members of the Planning Commission. Two members of the board shall have experience in the fields of real estate, law, planning, or related fields. Appointments shall be made for a term of five years, and one term shall expire each year. Vacancies shall be filled by appointment for the unexpired term only. Members may be removed by the affirmative vote of four members of the City Council after being given a written statement of the charges, and a hearing, which shall be a public hearing if the member so requests. (Ord. 12571 §394; May 8, 1979).

#### **27.75.020 Meetings.**

The members of the Board of Zoning Appeals shall meet at least once each month at such time and place as they may fix by resolution. They shall select one of their number as chairman, who shall serve one year and until a successor has been selected. Special meetings may be called at any time by the chairman. A majority of the board shall constitute a quorum for the transaction of business, and three affirmative votes shall be required for final action on any matter acted upon by the board. The board shall cause a proper record to be kept of its proceedings. (Ord. 12571 §395; May 8, 1979).

#### **27.75.030 Appeal Procedure.**

(a) Appeals to the Board of Zoning Appeals may be taken by any person aggrieved or by any office, department or bureau of the City of Lincoln affected by any decision of the director of building and safety. The decision of the director of building and safety shall be made in writing and the appeal shall be taken within sixty days from such written decision by filing with the director of building and safety a notice of appeal specifying the grounds thereof. The Director of Building and Safety shall forthwith transmit to the Board of Zoning Appeals all the papers constituting the record upon which the action appealed from is taken.

(b) Upon receipt of the appeal by the board, the board shall fix a reasonable time for the hearing thereon within thirty days. Notice shall be given as provided in Chapter 27.81.

(c) If, due to the absence of one or more of the members of the board, any proposition put to a vote shall fail to receive three or more votes either for or against, said proposition shall be deemed to have received neither approval nor disapproval. (Ord. 12571 §396; May 8, 1979).

#### **27.75.040 Jurisdiction.**

The jurisdiction of the Board of Zoning Appeals shall be limited to the following:

(a) Powers relative to errors. To hear appeals where it is alleged there is an error in any order, decision, or determination made by an administrative official in the enforcement of this title;

(b) Powers relative to variances. To hear and decide upon petitions for variances and, subject to such standards, principles, and procedures provided in this title, to vary the strict application of the height, area, parking, density or sign requirements to the extent necessary to permit the owner a reasonable use of the land in those specified instances where there are peculiar, exceptional and unusual circumstances in connection with a specific parcel of land, which circumstances are not generally found within the locality or neighborhood concerned.

(c) Powers relative to exceptions. Upon petition, the board is hereby empowered to make the following zoning exceptions:

(1) To permit the reconstruction of a nonconforming building which has been destroyed, or partially destroyed by fire or act of God where the board shall find some compelling public necessity requiring the continuance of the nonconforming use;

(2) To interpret the provisions of the title where the street layout actually on the ground varies from street layout as shown on the map fixing the several districts, which map is attached to and made a part of the title;

(3) To reduce the parking requirements in the commercial, business or industrial districts whenever the character of the use of building is such as to make unnecessary the full provisions of parking facilities as required. In permitting a reduction, the board may restrict the use of the building to uses requiring a similar reduced number of parking facilities. The granting of a reduction in parking requirements shall not serve as a convenience to the petitioner but shall recognize the varying demands for off-street parking by different uses that cannot reasonably be determined in detail in the zoning ordinance.

(d) Powers relative to airport zoning. The board shall have the power designated to it by Sections 27.59.110 and 27.59.120. (Ord. 14649 §1; April 20, 1987; prior Ord. 13440 §1; September 7, 1982; Ord. 12571 §397; May 8, 1979).

*Annot.: Use variances are customarily concerned with "hardship" while area variances are customarily concerned with "practical difficulty." Alumni Control Board v. City of Lincoln, 179 Neb. 194, 137 N.W.2d 800 (1965).*

*Proper criteria on review of application for variance include:*

(1) *Whether strict compliance would preclude a permitted use of property;*

(2) *Whether grant of variance would do substantial justice to both property owner and neighbors;*

(3) *Whether relief can be granted in such a fashion that the spirit of the ordinance will be observed and the public safety and welfare secured. Id.*

*University of Nebraska housing code and economic realities applying to fraternity house operation are not practical difficulties sufficient to sustain an application for a variance.*

**27.75.050 Decisions of Board; Scope and Factors Considered.**

In exercising the above-mentioned jurisdiction, the board may in conformity with the provisions of this title reverse or affirm, wholly or partially, or may modify the order, requirement, decision, or determination appealed from and may make such decision as ought to be made. In considering all appeals and petitions within its jurisdiction under this title, the board shall, before making any finding in a specific case, first determine that the proposed change will not constitute a change in the district map and will not impair an adequate supply of light and air to adjacent property, or increase the congestion in public streets, or increase the public danger of fire and safety, or materially diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals, and welfare of the City of Lincoln. In making a determination, the board may request information and recommendations from any department of the City of Lincoln. Every decision by the board shall be accompanied by a written finding of fact based on testimony and other evidence, specifying the reason for granting or denying the variation. In the event that the proposed variance or exception is denied by the Board of Zoning Appeals, no new request shall be made for the same or a substantially similar variance or exception within one year of said denial thereof. (Ord. 12571 §398; May 8, 1979).

**27.75.060 Decision of Board Transmitted to City Clerk.**

Decisions of the Board of Zoning Appeals, accompanied by the written findings of fact, shall be transmitted to the City Clerk by the board within one week after such actions have been taken. Any decision approving an appeal shall be by resolution of the board, a certified copy of which shall be filed with the Register of Deeds by the petitioner at the expense of the petitioner within sixty days after such approval, or such approval shall be null and void. (Ord. 12571 §399; May 8, 1979).